

Assembly Bill No. 409

CHAPTER 105

An act to amend Section 1063.5 of the Insurance Code, relating to the California Insurance Guarantee Association.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 409, Garrick. California Insurance Guarantee Association: insurer insolvency.

Existing law requires the California Insurance Guarantee Association to collect premium payments from member insurers sufficient to cover the obligations of an insurer that has become insolvent. Under existing law, the rate of premium charged a member insurer is a uniform percentage of the net direct written premium of the insurer in the preceding calendar year. Existing law provides that the initial premium charge shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the 2nd year following the year in which the initial premium charge is made.

This bill would, instead, provide that the initial premium charge shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the 2nd year following the year on which the initial premium charge was based.

The people of the State of California do enact as follows:

SECTION 1. Section 1063.5 of the Insurance Code is amended to read:

1063.5. Each time an insurer becomes insolvent then, to the extent necessary to secure funds for the association for payment of covered claims of that insolvent insurer and also for payment of reasonable costs of adjusting the claims, the association shall collect premium payments from its member insurers sufficient to discharge its obligations. The association shall allocate its claim payments and costs, incurred or estimated to be incurred, to one or more of the following categories: (a) workers' compensation claims; (b) homeowners' claims, and automobile claims, which shall include: automobile material damage, automobile liability (both personal injury and death and property damage), medical payments and uninsured motorist claims; and (c) claims other than workers' compensation, homeowners', and automobile, as above defined. Separate premium payments shall be required for each category. The premium payments for each category shall be used to pay the claims and costs allocated to that category. The rate of premium charged

shall be a uniform percentage of net direct written premium in the preceding calendar year applicable to that category. The rate of premium charges to each member in the appropriate categories shall initially be based on the written premium of each insurer as shown in the latest year's annual financial statement on file with the commissioner. The initial premium shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the second year following the year on which the initial premium charge was based. The difference between the initial premium charge and the adjusted premium charge shall be charged or credited to each member insurer by the association as soon as practical after the filing of the annual statements of the member insurers with the commissioner for the year on which the adjusted premium is based. Any credit due in a specific category to a member insurer as a result of the adjusted premium calculation may be refunded to the member insurer at the discretion of the association if the member insurer has agreed with the commissioner to no longer write insurance in that category but has not withdrawn from the state and surrendered its certificate of authority. However, in the case of an insurer that was a member insurer when the initial premium charge was made and that paid the initial assessment but is no longer a member insurer at the time of the adjusted premium charge by reason of its insolvency or its withdrawal from the state and surrender of its certificate of authority to transact insurance in this state, any credit accruing to that insurer shall be refunded to it by the association. "Net direct written premiums" shall mean the amount of gross premiums, less return premiums, received in that calendar year upon business done in this state, other than premiums received for reinsurance. In cases of a dispute as to the amount of the net direct written premium between the association and one of its members the written decision of the commissioner shall be final. The premium charged to any member insurer for any of the three categories or a category established by the association shall not be more than 2 percent of the net direct premium written in that category in this state by that member per year, starting on January 1, 2003, until December 31, 2007, and thereafter shall be 1 percent per year. The association may exempt or defer, in whole or in part, the premium charge of any member insurer, if the premium charge would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment, no dividends shall be paid to shareholders or policyholders by the company whose premium charge was deferred. Deferred premium charges shall be paid when the payment will not reduce capital or surplus below required minimums. These payments shall be credited against future premium charges to those companies receiving larger premium charges by virtue of the deferment. After all covered claims of the insolvent insurer and expenses of administration have been paid, any unused premiums and any reimbursements or claims dividends from the liquidator remaining in any category shall be retained by the association and applied to reduce future

premium charges in the appropriate category. However, an insurer which ceases to be a member of the association, other than an insurer that has become insolvent or has withdrawn from the state and has surrendered its certificate of authority following an initial assessment that is entitled to a refund based upon an adjusted assessment as provided above in this section, shall have no right to a refund of any premium previously remitted to the association. The commissioner may suspend or revoke the certificate of authority to transact business in this state of a member insurer which fails to pay a premium when due and after demand has been made.

Interest at a rate equal to the current federal reserve discount rate plus 2½ percent per annum shall be added to the premium of any member insurer which fails to submit the premium requested by the association within 30 days after the mailing request. However, in no event shall the interest rate exceed the legal maximum.